

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Statutory Review of the System
for Regulating Rates and Classes
for Market Dominant Products

Docket No. RM2017-3

ORDER ON MOTIONS FOR ISSUANCE OF INFORMATION REQUESTS

(Issued January 30, 2017)

On December 20, 2016, the Commission issued an advance notice of proposed rulemaking to initiate the review of the modern system of regulating rates and classes for market dominant products.¹

MPA—The Association of Magazine Media and the Alliance of Nonprofit Mailers (together, Joint Movants) have filed two motions for the issuance of information requests pursuant to 39 C.F.R. § 3001.21(a).² On January 24, 2017, the Postal Service

¹ Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, December 20, 2016 (Order No. 3673).

² Motion of MPA—The Association of Magazine Media and Alliance of Nonprofit Mailers for Issuance of Information Requests, January 17, 2017 (First Motion); Second Motion of MPA—The Association of Magazine Media and Alliance of Nonprofit Mailers for Issuance of Information Requests, January 25, 2017 (Second Motion).

filed its response in opposition of the First Motion.³ On January 27, 2017, MPA—The Association of Magazine Media, the Alliance of Nonprofit Mailers, and the Association for Postal Commerce filed a reply to the Postal Service’s response.⁴ For the reasons discussed below, the Commission denies both motions.

In the First Motion, the Joint Movants state that the information they request is necessary to analyze whether the current regulatory system is achieving certain subsections of 39 U.S.C. § 3622. First Motion at 1. The Joint Movants explain these questions are necessary to: (1) place the Postal Service’s long-term finances into proper perspective; and (2) assess the efficiency of certain major expense categories. *Id.* at 1, 2.

The Postal Service opposes the First Motion on two grounds. Response at 1. First, the Postal Service contends that such information requests should not be permitted at this stage of the proceeding. *Id.* Second, the Postal Service argues that the Joint Movants have not demonstrated a specific need for the information requested. *Id.*

In the Second Motion, the Joint Movants request information related to the Postal Service’s current and projected revenue and costs. See Second Motion at 1. The Joint Movants identify this query as a key issue of these proceedings because “the Postal Service’s claim of present and future revenue inadequacy is the linchpin of the Postal Service’s challenge to the CPI cap on market-dominant rates.” *Id.*

³ Response of the United States Postal Service in Opposition to MPA—The Association of Magazine Media and Alliance of Nonprofit Mailers’ Motion for Issuance of Information Requests, January 24, 2017 (Response).

⁴ Reply of MPA—The Association of Magazine Media, Alliance of Nonprofit Mailers, and Association for Postal Commerce to Opposition of the United States Postal Service to January 17 Motion for Issuance of Information Requests, January 27, 2017 (Reply). The same parties also filed a motion for leave to reply. Motion of MPA—The Association of Magazine Media, Alliance of Nonprofit Mailers, and Association for Postal Commerce for Leave to File Reply to Opposition of the United States Postal Service to January 17 Motion for Issuance of Information Requests, January 27, 2017 (Motion for Leave). The Commission generally does not allow replies, nor does it find a reply or other responsive document necessary to resolve the motions at issue. See 39 C.F.R. § 3001.21(b) (“Unless the Commissioner or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.”). Thus, the Reply is not accepted, and the Motion for Leave is denied.

Following the statutory mandate that it review the past 10 years of the existing market dominant rate and classification system, the Commission issued Order No. 3673 to solicit comments regarding whether the current system is achieving the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c) and on the proposed process and structure for the Commission's review. See Order No. 3673 at 10. The Commission also set forth a proposed framework for its review and invited comments in response to specific questions. *Id.* at 10-11.

Given the unique nature of this docket and the statutory requirement that the Commission review the system for regulating rates and classes for market dominant products, the Commission does not view this stage of the docket as a litigated proceeding, but (as Order No. 3673 contemplates and 39 U.S.C. § 3622(d)(3) requires) an opportunity for the Commission to seek and consider public comment prior to making its initial determinations of whether the system is meeting the objectives, considering the factors. The Commission did not contemplate discovery within this proceeding, and its view remains unchanged at this time. If, however, the Commission later determines that additional information is necessary to facilitate its review, it will consider requesting such information in accordance with its regulations.

Additionally, the Commission notes the Postal Service's representation that some information sought by the Joint Movants in the First Motion is generally publicly available. See Response at 2.

In conclusion, for the foregoing reasons, the Commission denies the Joint Movants' First and Second Motions.

It is ordered:

1. The Motion of MPA—The Association of Magazine Media and Alliance of Nonprofit Mailers for Issuance of Information Requests, filed on January 17, 2017, is denied.

2. The Second Motion of MPA—The Association of Magazine Media and Alliance of Nonprofit Mailers for Issuance of Information Requests, filed on January 25, 2017, is denied.

By the Commission.

Stacy L. Ruble
Secretary